

**NRC Staff Attachment 1: Table of Testimony and Exhibits to be Excluded for
Contention CW-EC-3A (Environmental Justice)**

Evidence to be Excluded	Basis for Exclusion
CLE000046 – Rebuttal Testimony of Manna Jo Greene Regarding Clearwater’s Environmental Justice Contention	
<p>On page 2, A3, exclude the following text:</p> <p>Notably, even the NRC has stated “(a)nyone without full access to, or protection from, the decision making process is conceivably an environmental justice constituent.” CLE000051 at 4. The Staff stated that obvious EJ populations are the poor, minority populations, subsistence resource users, and Native Americans. <i>Id.</i> at 3. However, the Staff included “the (e)lderly and those on fixed incomes” and “people with special needs.” <i>Id.</i> at 4. These statements show that Entergy’s attempt to exclude the elderly and disabled from the EJ population is mistaken.</p>	<p>This portion of Ms. Greene’s testimony attempts to impermissibly expand the scope of Contention CW-EC-3A to include the elderly and other non-EJ populations. This testimony should be excluded because it falls outside the scope of the Contention CW-EC-3A.</p>
<p>Exclude everything from Q4, page 2 through A20, page 7.</p>	<p>Ms. Greene’s testimony includes an account of Dr. Irwin Redlener’s presentation regarding emergency planning issues. This portion of Ms. Greene’s testimony should be excluded on grounds that this evidence directly challenges the adequacy of the emergency plans, and is thus outside the scope of Contention CW-EC-3A. Moreover, this testimony should be excluded because it is not relevant, not reliable, and not responsive to the testimony and exhibits proffered by the Staff and Entergy.</p>
CLE000047 – Rebuttal Testimony of Michael Edelstein Regarding Clearwater’s Environmental Justice Contention	
<p>Exclude all of Q9 and A9 on pages 3-4.</p>	<p>This portion of Dr. Edelstein’s testimony discusses a presentation given by David B. Matthews, Director, Division of New Reactor Licensing, Office of New Reactors regarding the environmental justice review for the V.C. Summer Nuclear Station combined operating license (COL). Mr. Matthews’s presentation does not establish Commission policy or legal precedent. Further, it cannot expand the</p>

	scope of this contention as admitted. Accordingly, this testimony should be excluded from the hearing record.
Exclude all of Q11 and A11 on pages 5-6.	This portion of Dr. Edelstein's testimony regarding Fukushima should be excluded on grounds that this evidence lacks relevance and challenges the adequacy of the emergency plans and is thus outside the scope of Contention CW-EC-3A.
CLE000048 – Rebuttal Testimony of Dr. Andrew S. Kanter, M.D. M.P.H. in Support of Hudson River Sloop Clearwater, Inc.'s Contention EC-3A Regarding Environmental Justice	
On page 3, A4, exclude the following text: even beyond the 50 mile limit recommended by NRC Chairman Jaczko for the Fukushima accident.	These portions of Dr. Kanter's testimony regarding the Chairman's statements regarding Fukushima should be excluded on grounds that this evidence lacks relevance and is used to challenge the adequacy of the emergency plans which is outside the scope of Contention CW-EC-3A.
On page 3, A4, exclude the following text and corresponding footnote 1: In an interview on May 10, 2012, Chairman Jaczko admitted that the 10 mile zone was merely a "planning standard", and that larger areas may require additional recommended actions. ¹	
CLE000050 – Morris-Suzuki, Boilley, McNeill, and Gundersen, Greenpeace: Lessons from Fukushima (Feb. 2012)	
Exclude the entire exhibit.	This exhibit regarding lessons learned from Fukushima should be excluded in its entirety on grounds that this evidence is not relevant. Additionally, Dr. Edelstein uses this exhibit to challenge the adequacy of the emergency plans which is outside the scope of this contention.
CLE000051 – David B. Matthews, Environmental Justice and the NRC: A Progression to Excellence (April 22, 2012)	
Exclude the entire exhibit.	Both Ms. Greene and Dr. Edelstein refer to this exhibit in their testimony. Mr. Matthews's presentation does not establish Commission policy or legal precedent. Further, it cannot

	expand the scope of this contention as admitted. Accordingly, this exhibit should be excluded.
CLE000052 – Robert Booth and Justin McCurry, The Guardian: Japanese Earthquake Takes Heavy Toll on Aging Population (March 17, 2011)	
Exclude the entire exhibit.	This exhibit is a news article from March 17, 2011 regarding impacts to the elderly in Japan from Fukushima. This exhibit is used to impermissibly expand the scope of Contention CW-EC-3A to include the elderly. Additionally, this exhibit should be excluded because it lacks relevance and challenges the adequacy of the emergency plans which is outside the scope of Contention CW-EC-3A. Additionally, as this article is from 2011, Dr. Edelstein could have introduced this exhibit in his initial testimony.
CLE000053 – Yuka Hyashi, The Wall Street Journal: Panel Says Crisis Showed Facilities' Terrorism Risks (Feb. 29, 2012)	
Exclude the entire exhibit.	This exhibit is a news article from February 29, 2012 regarding a 400 page report released about Fukushima. Dr. Edelstein uses this exhibit to challenge the adequacy of the emergency plans which is outside the scope of this contention. Additionally, this exhibit lacks relevance and should thus be excluded.
CLE000054 – Staff, Associated Press, CNS News: AP Enterprise: Nuke Evacuation Fatal for Old, Sick (March 10, 2012)	
Exclude the entire exhibit.	This exhibit is a news article from March 10, 2012 regarding impacts in the aftermath of Fukushima. This exhibit is used to impermissibly expand the scope of Contention CW-EC-3A to include the elderly. Additionally, this exhibit is used to challenge the adequacy of the emergency plans. Thus, this exhibit should be excluded in its entirety because it lacks relevance and falls outside the scope of Contention CW-EC-3A.
CLE000055 – The Daily Yomiuri: 573 Deaths Related to Nuclear Crisis (Feb. 5, 2012)	
Exclude the entire exhibit.	This exhibit is a new article from February 5, 2012 regarding the number of deaths related to Fukushima. This exhibit should be

	excluded because it is used to challenge the adequacy of the emergency plans and thus falls outside the scope of Contention CW-EC-3A.
CLE000056 – Mail Online: An Accident waiting to happen? Populations around U.S. nuclear plants have grown 450% since 1980 (June 27, 2011)	
Exclude the entire exhibit.	This exhibit is a news article from June 27, 2011 regarding emergency planning issues related to Indian Point and Fukushima. This exhibit should be excluded in its entirety because it is used to challenge the adequacy of the emergency plans and is thus irrelevant and outside the scope of Contention CW-EC-3A.
CLE000057 – Irwin Redlener, M.D., Presentation Excerpt: Evacuation Planning: The Achilles Heel of Disaster Readiness (March 2012)	
Exclude the entire exhibit.	This exhibit is a summary of Dr. Irwin Redlener’s presentation regarding emergency planning issues. This exhibit should be excluded on grounds that this evidence directly challenges the adequacy of the emergency plans, and is thus outside the scope of Contention CW-EC-3A.
CLE000058 – Michael Edelstein, Ph.D Rebuttal to Respondents to Testimony on the Environmental Justice Contention Report (June 27, 2012)	
Exclude everything beginning on page 6, Section E through the end of Section M on page 9.	In this portion of his rebuttal report, Dr. Edelstein explores hypothetical psycho-social explanations and motivations behind the Staff’s testimony. This evidence should be excluded because it not relevant to Contention CW-EC-3A and it is not responsive to environmental justice issues raised in the Staff’s testimony and exhibits.
On page 8, exclude all of Section L as shown below: L. Regulatory capture may also be at play. I was hardly the first to observe this phenomenon, discussed most recently in light of the BP Oil Disaster in the Gulf of Mexico. Regulatory capture occurs when regulators and industry get too cozy, when revolving	These portions of Dr. Edelstein’s regarding Fukushima should be excluded on grounds that this evidence lacks relevance and challenges the adequacy of the emergency plans which is outside the scope of Contention CW-EC-3A.

<p>doors are evident between them, when the regulators' mission coincides too closely with the industry they regulate and when professionals involved on either the government or industry side share the same training, jargon and disciplinary biases. In its excellent discussion of the Lessons of Fukushima, Greenpeace devotes an entire chapter to this question, concluding both that it was a major contributing factor to that disaster and that it is a serious problem for U.S. nuclear regulation as well. Tessa Morris-Suzuki, David Boilley, David McNeill, & Arnie Gundersen, Greenpeace Lessons from Fukushima 37-45 (Feb. 2012) ("Greenpeace: Lessons From Fukushima") (Ex. CLE000050).</p>	
<p>At the top of page 9, exclude the following text from Section M:</p> <p>The Japanese deployed the most advanced equipment for pinpointing where people had to be evacuated and where they might shelter safely. However, the equipment was ineptly used with the result that there are numerous examples of unnecessary public exposures due to errant information. CLE000050 at 18.</p>	
<p>On pages 19-20, exclude the following text:</p> <p>We know from the Fukushima and Chernobyl accidents that this can translate to Sheltering in Place for ten or more days. Greenpeace: Lessons From Fukushima at 7 (CLE000050).</p>	
<p>On pages 23-24, exclude everything in Section V. Fukushima.</p>	
<p>On page 26, exclude the following text:</p> <p>I have appended several pages from my book Contaminated Communities that address just this question (see Appendix 1).</p>	<p>In Dr. Edelstein's rebuttal report, he refers to his book, Contaminated Communities, which is a critique of a Supreme Court decision regarding the need to consider psychological impacts under the National Environmental Policy Act (NEPA). This testimony is not relevant to Contention CW-EC-3A and should be excluded.</p>

CLE000059 – Michael Edelstein, Ph.D Appendix 1 to Rebuttal to Respondents to Testimony on the Environmental Justice Contention Report (June 27, 2012)

Exclude the entire exhibit.

This exhibit is an excerpt from Dr. Edelstein's book entitled "Contaminated Communities: Coping with Residential Toxic Exposure." This excerpt is a critique of a Supreme Court case regarding the need to consider psychological impacts under the National Environmental Policy Act (NEPA). This exhibit should be excluded on grounds that this evidence is not relevant to Contention CW-EC-3A and whether the environmental impacts on environmental justice populations near Indian Point will experience a disproportionately high and adverse impact from a severe accident at Indian Point.